IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15042 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PROTO PUMPS AND MOTORS PVT LTD

Versus

ASSTT.PROVIDENT FUND COMMISSIONER E.P.F.O.

Appearance:

1. Special Civil Application No. 15042 of 2003

M/S THAKKAR ASSOC. for Petitioner No. 1

MR PJ MEHTA for Respondent No. 1-3

NOTICE SERVED for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 12/04/2004

ORAL JUDGEMENT

1. Rule. Mr.Mehta, learned Counsel waives service of rule on behalf of the respondents. With the consent of the parties, the matter is taken up for final hearing today.

2. The present petition is preferred by the petitioner challenging the order dated 3-4-2002 and the order dated 19-4-2002 passed by the Provident Fund Authority under Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Act"), whereby the petitioner company is ordered to pay the amount of Rs.1,99,789, as contribution to provident fund and subsequently as per the order dated 19-4-2002, the review application is also dismissed.

3. The learned Counsel appearing for the petitioner submitted, inter alia, that the appeal is preferred by the petitioner against the impugned decision before the Tribunal. However, the Presiding Officer of the Tribunal is not available and, therefore, for the purpose of interim protection, there is no forum available and, therefore, this petition. It has been submitted by the learned Counsel for the petitioner that it is the case of the respondent that on the basis of the balance-sheet, since labour charges are included, the calculation has been made. As such, in the submission of the learned Counsel appearing for the petitioner, the payment shown towards labour charges is through labour contract and the labour Contractors for doing the labour contract are different and those contractors are separately covered by the Act. They are having separate PF Account numbers and they have also deposited contribution and she further submitted that in any case such details were never called for by the Provident Fund Authority before passing the impugned order. The statement in support of the aforesaid submission is made by the petitioner at para 2, internal page 43 of the Affidavit-in-rejoinder filed by one of the Directors of the petitioner company. The said statement reads as under:

> "2. ...I am not in a position to understand on what basis the respondents have calculated the amount of outstanding dues. I state that assuming that the labour charges have been considered as outstanding dues, then in my humble submission, the labour charges paid by the petitioner cannot be considered for provident fund. I say and submit that for the period of 2000, 2001 and 2002, the labour charges which is paid by the petitioner, is mainly paid to Drip Plastic Products and SBR Mechanical Works. I

state that SBR Mechanical Works is sister concern of the petitioner company and SBR Mechanical Works is doing job work for the petitioner company. I state that SBR Mechanical Works does no other work than the job work of the petitioner company. I state that the petitioner company i.e. Proto Pumps & Motors Pvt. Ltd. provides cast iron as raw material to SBR Mechanical Works and SBR Mechanical Works as per drawing provided by the petitioner company, does turning and mechanizing and then provides complete part to the petitioner company. I state that SBR Mechanical Works pay salary to the workers who do job work for the petitioner company. I state that SBR Mechanical Works is having 14 workers and the said company is covered under the Provident Fund Act and the salary paid by the said company to its employees who do job work of the petitioner company is covered under Provident Fund Act and the said company is depositing amount towards provident fund as per the Act. I state that the other company to which the labour charges are given is Drip Plastic Products and the said company is also doing job work of petitioner company. I state that the said company is also covered under the Provident Fund Act and Drip Plastic is also depositing amount required under the Act. Annexed hereto and marked as Annexure "I" Colly are the copies of some of the bills of SBR Mechanical Works and Drip Plastic Products. I also rely on the list of labour charges paid by the petitioner company for the period 1999-2000 & 2000-2001 to show that labour charges paid by the petitioner company is mainly to SBR Mechanical Works and Drip Plastic Products which are covered under the provisions of Provident Fund Act. I say and submit that the labour charges paid to the other company is of very small amount and those companies are having one machine and are doing business on limited basis. Annexed hereto and marked as Annexure "II" is the copy of list of labour charges paid during relevant period."

4. Mr.Mehta, learned Counsel appearing for the Provident Fund Authority submitted that it was the duty of the petitioner to supply all the details that the contract labourers have made PF contribution and in absence of the same, the P.F. Authority was justified in including all labour charges for the purpose of PF contribution and, therefore, he submitted that the order passed by the Authority does not deserve to be interfered

with and no protection pending the appeal deserves to be granted.

5. In view of the above, it is found by the Court that the main issue raised for challenging the impugned order can be put to an end by suitable directions and the learned Counsel appearing for both the sides have agreed for such final direction against the impugned order. The learned Counsel appearing for the petitioner has also submitted that if this Court is finally considering the matter against the challenge to the impugned order, no useful purpose would be served in keeping the appeal pending before the Tribunal and she declared that within a period of 15 days from today, the appeal would be withdrawn by the petitioner in view of the final order which may be passed by this Court in this petition.

6. As the learned Counsel appearing for both the sides have agreed for examination of the issue regarding the challenge to the impugned order in this petition, and no Presiding Officer is available at present. Considering the facts and circumstances, it appears that the Provident Fund Authority ought to have called upon the petitioner to submit the details of the labour charges and also the break up of the same through contract labourers. The Provident Fund Authority could have given opportunity to the petitioner to submit further details as to whether such contract labourers who are paid labour charges have complied with the provisions of the Act for the P.F. contribution or not. If the contractors are covered by the Act and they have already made contribution for such purpose separately in their own account, naturally there may not be double contribution for such purpose. If the P.F. Authority finds that though the contractors are covered by the scheme and in spite of the same, the contribution is not made by the contractors, then only the liability can be fastened upon the principal employer for compliance of the statutory provisions.

7. Considering the facts and circumstances and more particularly the perusal of the order impugned in this petition read with the above referred statement made on behalf of the petitioner, it appears that the P.F.Authority has not at all examined the said aspect before passing the impugned order. It is hardly required to be stated that reasonable opportunity deserves to be given to the party concerned to put forward the case even if the some material is to be used against such party. If the opportunity is given and thereafter the material is not produced, then possibly different view can be

taken, but if no opportunity is given for such purpose and at any point of time, the concerned authority has not intimated regarding the material to be used against it for such purpose, then such an approach for taking decision in such a manner cannot be justified.

8. It will be for the petitioner to submit details regarding the break up of the labour charges contract-wise and the details as to whether the contractors are covered by the said Act and whether they have made any separate contribution or not. After such details are produced by the petitioner, the matter can be finally concluded. Therefore, considering the facts and circumstances it appears that no useful purpose would be served in keeping the appeal pending, more particularly when the Presiding Officer is also not available and in the facts and circumstances, this Court has found that the order passed by the Authority which is impugned in the appeal as well as in this petition, deserves to be reconsidered.

9. In view of the above, I find that the following directions shall meet with the ends of justice:

9.1.) The impugned order dated 3-4-2002 as well as the order passed in review application dated 19-4-2002 are quashed and set aside.

9.2) the petitioner shall submit the details of the break up of the labour charges, contract-wise and the compliance of the Act for P.F.Contribution by the Contractors or otherwise. Such details shall be submitted within a period of one month from today.

9.3.) After the details are submitted, the matter will be reconsidered by the competent authority under the P.F. Act and after giving opportunity of hearing, the decision shall be rendered in light of the observations made by this Court, as early as possible, preferably within a period of three months from the date of submission of such details.

9.4.) The petitioner shall withdraw the proceedings of the appeal as declared before the Court within a period of 15 days from today.

10. The petition is allowed to the aforesaid extent. Rule made absolute accordingly. Considering the facts and circumstances of the case, no order as to costs.

12-4-2004 (Jayant Patel, J.)

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